

AMENDED IN SENATE MAY 14, 2003

AMENDED IN SENATE MAY 12, 2003

AMENDED IN SENATE MAY 1, 2003

AMENDED IN SENATE APRIL 10, 2003

AMENDED IN SENATE APRIL 8, 2003

SENATE BILL**No. 548**

Introduced by Senator Burton

February 20, 2003

An act to amend Section 15626 of the Government Code, and to amend Sections 19048, 19334, and 19346 of the Revenue and Taxation Code, relating to tax administration.

LEGISLATIVE COUNSEL'S DIGEST

SB 548, as amended, Burton. Tax administration: conflicts of interest: State Board of Equalization: tax appeals.

(1) The Quentin L. Kopp Conflict of Interest Act of 1990 generally prohibits a member of the State Board of Equalization from making or participating in a decision in an adjudicatory proceeding pending before the board if the member knows he or she received a contribution aggregating \$250 or more within the preceding 12 months from a party or his or her agent, or from a participant or his or her agent, and if the member knows the participant has a financial interest in the decision.

This bill would increase that amount to \$1,000 or more and would also include, within the application of this law, a contribution aggregating \$1,000 or more within the preceding 12 months from a committee that has received a contribution or contributions in an

aggregate amount of \$1,000 or more within the preceding 12 months from a corporation that is a party, participant, or agent.

(2) Existing law requires a member of the State Board of Equalization who knows he or she has received a contribution aggregating \$250 or more within the preceding 12 months to disclose that fact on the record of the proceeding prior to rendering any decision in an adjudicatory proceeding pending before the board, and requires a party or participant in the proceeding to disclose on the record these contributions.

This bill would require disclosure of a contribution aggregating \$1,000 or more within the preceding 12 months, including a contribution from a committee that has received a contribution or contributions in an aggregate amount of \$1,000 or more within the preceding 12 months from a corporation that is a party, participant, or agent.

(3) Existing law makes it a misdemeanor to knowingly or willfully violate the provisions described in (1) and (2) above, and provides for financial and other penalties against those convicted of a violation of those provisions.

This bill, by adding to the acts that would be subject to these criminal provisions, would impose a state-mandated local program.

(4) Under existing law the State Board of Equalization serves as a quasi-judicial body for deciding appeals from actions of both the Franchise Tax Board and the State Board of Equalization. If a taxpayer disagrees with the decision of the State Board of Equalization, that taxpayer may, after payment of the disputed tax liability, appeal the final decision of the board by filing a claim for refund with the superior court. Existing law does not specifically authorize the Franchise Tax Board or the Executive Director of the State Board of Equalization to appeal a final decision of the State Board of Equalization.

This bill would authorize the Attorney General, independently, or with the approval of the Executive Director of the Franchise Tax Board or the Director of Finance, to bring an action in the name of the people of the State of California for a trial de novo in superior court to determine the deficiency or carryover amount, *the amount of refund or credit, or allowance of interest* that was the subject of the determination of the State Board of Equalization.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.



Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 15626 of the Government Code is
2 amended to read:

3 15626. (a) This section shall be known, and may be cited, as
4 the Quentin L. Kopp Conflict of Interest Act of 1990.

5 (b) Prior to rendering any decision in any adjudicatory
6 proceeding pending before the State Board of Equalization, each
7 member who knows or has reason to know that he or she received
8 a contribution or contributions within the preceding 12 months in
9 an aggregate amount of one thousand dollars (\$1,000) or more
10 from a party or his or her agent, from any participant or his or her
11 agent, or from a committee that has received a contribution or
12 contributions in an aggregate amount of one thousand dollars
13 (\$1,000) or more within the preceding 12 months from a
14 corporation that is a party, participant, or agent shall disclose that
15 fact on the record of the proceeding.

16 (c) A member may not make, participate in making, or in any
17 way attempt to use his or her official position to influence the
18 decision in any adjudicatory proceeding pending before the board
19 if the member knows or has reason to know that he or she received
20 a contribution or contributions in an aggregate amount of one
21 thousand dollars (\$1,000) or more within the preceding 12 months
22 from a party or his or her agent, from any participant or his or her
23 agent, or from a committee that has received a contribution or
24 contributions in an aggregate amount of one thousand dollars
25 (\$1,000) or more within the preceding 12 months from a
26 corporation that is a party, participant, or agent, and if the member
27 knows or has reason to know that the participant has a financial
28 interest in the decision, as that term is used in Article 1
29 (commencing with Section 87100) of Chapter 7 of Title 9.

30 (d) Notwithstanding subdivision (c), if a member receives a
31 contribution that would otherwise require disqualification under

1 subdivision (c), and he or she returns the contribution within 30
2 days from the time he or she knows, or has reason to know, about
3 the contribution and the adjudicatory proceeding pending before
4 the board, his or her participation in the proceeding shall be
5 deemed lawful.

6 (e) A party to, or a participant in, an adjudicatory proceeding
7 pending before the board shall disclose on the record of the
8 proceeding any contribution or contributions in an aggregate
9 amount of one thousand dollars (\$1,000) or more made within the
10 preceding 12 months by the party or participant, his or her agent,
11 or by a committee that has received a contribution or contributions
12 in an aggregate amount of one thousand dollars (\$1,000) or more
13 within the preceding 12 months from a corporation that is the
14 party, participant, or agent, to any member of the board.

15 (f) When a close corporation is a party to, or a participant in,
16 an adjudicatory proceeding pending before the board, the majority
17 shareholder is subject to the disclosure requirement specified in
18 this section.

19 (g) For purposes of this section, if a deputy to the Controller sits
20 at a meeting of the board and votes on behalf of the Controller, the
21 deputy shall disclose contributions made to the Controller and
22 shall disqualify himself or herself from voting pursuant to this
23 section.

24 (h) For the purposes of this section:

25 (1) “Committee” has the same meaning prescribed in Section
26 82013 and the regulations adopted pursuant thereto.

27 (2) “Contribution” has the same meaning prescribed in
28 Section 82015 and the regulations adopted pursuant thereto.

29 (3) “Party” means any person who is the subject of an
30 adjudicatory proceeding pending before the board.

31 (4) “Participant” means any person who is not a party but who
32 actively supports or opposes a particular decision in an
33 adjudicatory proceeding pending before the board and who has a
34 financial interest in the decision, as described in Article 1
35 (commencing with Section 87100) of Chapter 7 of Title 9. A
36 person actively supports or opposes a particular decision if he or
37 she lobbies in person the members or employees of the board,
38 testifies in person before the board, or otherwise acts to influence
39 the members of the board.



1 (5) “Agent” means any person who represents a party to or
2 participant in an adjudicatory proceeding pending before the
3 board. If a person acting as an agent is also acting as an employee
4 or member of a law, accounting, consulting, or other firm, or a
5 similar entity or corporation, both the entity or corporation and the
6 person are agents.

7 (6) “Adjudicatory proceeding pending before the board”
8 means a matter for adjudication that has been scheduled and
9 appears as an item on a meeting notice of the board as required by
10 Section 11125 as a contested matter for administrative hearing
11 before the board members. A consent calendar matter is not
12 included unless the matter has previously appeared on the calendar
13 as a nonconsent item, or has been removed from the consent
14 calendar for separate discussion and vote, or the item is one about
15 which the member has previously contacted the staff or a party.

16 (7) A member knows or has reason to know about a
17 contribution if, after the adjudicatory proceeding first appears on
18 a meeting notice of the board, facts have been brought to the
19 member’s personal attention that he or she has received a
20 contribution that would require disqualification under subdivision
21 (c), or that the member received written notice from the board
22 staff, before commencement of the hearing and before any
23 subsequent decision on the matter, that a specific party, close
24 corporation, or majority shareholder, or agent thereof, or any
25 participant having a financial interest in the matter, or agent
26 thereof, or a committee that has received a contribution or
27 contributions in an aggregate amount of one thousand dollars
28 (\$1,000) or more within the preceding 12 months from a
29 corporation that is a party, participant, or agent, in a specific,
30 named adjudicatory proceeding before the board, made a
31 contribution or contributions within the preceding 12 months in an
32 aggregate amount of one thousand dollars (\$1,000) or more. Each
33 member shall provide board staff with a copy of each of his or her
34 campaign statements at the time each of those statements is filed.

35 The notice of contribution shall be on a form prescribed under
36 rules adopted by the board to provide for staff inquiry of each
37 party, participant, close corporation, and its majority shareholder,
38 and any agent thereof, to determine whether any contribution has
39 been made to a member, and if so, in what aggregate amount and

1 on what date or dates within the 12 months preceding an
2 adjudicatory proceeding or decision.

3 In addition, the staff shall inquire and report on the record as
4 follows:

5 (A) Whether any party or participant is a close corporation, and
6 if so, the name of its majority shareholder.

7 (B) Whether a committee that has received a contribution or
8 contributions in an aggregate amount of one thousand dollars
9 (\$1,000) or more within the preceding 12 months from a
10 corporation that is a party, participant, or agent has made a
11 contribution.

12 (C) Whether any agent is an employee or member of any law,
13 accounting, consulting or other firm, or similar entity or
14 corporation, and if so, its name and address and whether a
15 contribution has been made by that person, firm, corporation, or
16 entity.

17 (i) (1) Any person who knowingly or willfully violates any
18 provision of this section is guilty of a misdemeanor.

19 (2) A person convicted of a misdemeanor under this section
20 may not be a candidate for any elective office nor act as a lobbyist
21 for a period of four years following the time for filing a notice of
22 appeal has expired, or all possibility of direct attack in the courts
23 of this state has been finally exhausted, unless the court at the time
24 of sentencing specifically determines that this provision is not
25 applicable. A plea of nolo contendere shall be deemed a conviction
26 for the purposes of this section.

27 (3) In addition to other penalties provided by law, a fine of up
28 to the greater of ten thousand dollars (\$10,000), or three times the
29 amount the person failed to disclose or report properly, may be
30 imposed upon conviction for each violation.

31 (4) Prosecution for violation of this section shall be
32 commenced within four years after the date on which the violation
33 occurred.

34 (5) This section may not prevent any member of the board from
35 making, or participating in making, a governmental decision to the
36 extent that the member's participation is legally required for the
37 action or decision to be made. However, the fact that a member's
38 vote is needed to break a tie does not make the member's
39 participation legally required.



(j) A person may not create a committee or use an existing committee for the purpose of making a contribution that, if made directly, would otherwise violate this section.

SEC. 2. Section 19048 of the Revenue and Taxation Code is amended to read:

19048. (a) Except as provided in subdivision (b), the board's determination becomes final upon the expiration of 30 days from the time of the determination unless within the 30-day period the taxpayer or the Franchise Tax Board files a petition for rehearing with the board. In that event the determination becomes final upon the expiration of 30 days from the time the board issues its opinion on the petition.

(b) Notwithstanding any other provision of law, within 60 days of the determination of the board, an action in the name of the people of the State of California may be brought for a trial de novo in superior court to determine the deficiency (including tax, penalties, and interest) or the carryover amount, which was the subject of the determination of the board, under any of the following circumstances:

(1) The action is filed, with the approval of the Executive Officer of the Franchise Tax Board, by the Attorney General.

(2) The action is filed, with the approval of the Director of Finance, by the Attorney General.

(3) The action is filed by the Attorney General.

(c) No action brought under subdivision (b) may be compromised or dismissed without the approval of the Attorney General.

SEC. 3. Section 19334 of the Revenue and Taxation Code is amended to read:

19334. (a) Except as provided in subdivision (b), the determination of the board is final upon the expiration of 30 days from the date of the determination unless within the 30-day period, the taxpayer or Franchise Tax Board files a petition for rehearing with the board. In that event the determination becomes final upon the expiration of 30 days from the date the board issues its opinion on the petition.

(b) Notwithstanding any other provision of law, within 60 days of the determination of the board, an action in the name of the people of the State of California may be brought for a trial de novo in superior court to determine the ~~deficiency (including tax,~~

1 ~~penalties, and interest) or the carryover amount~~ *refund or credit*,
2 which was the subject of the determination of the board, under any
3 of the following circumstances:

4 (1) The action is filed, with the approval of the Executive
5 Officer of the Franchise Tax Board, by the Attorney General.

6 (2) The action is filed, with the approval of the Director of
7 Finance, by the Attorney General.

8 (3) The action is filed by the Attorney General.

9 (c) No action brought under subdivision (b) may be
10 compromised or dismissed without the approval of the Attorney
11 General.

12 SEC. 4. Section 19346 of the Revenue and Taxation Code is
13 amended to read:

14 19346. (a) Except as provided in subdivision (b), the
15 determination is final upon the expiration of 30 days from the date
16 of the determination unless within the 30-day period, the taxpayer
17 or Franchise Tax Board files a petition for rehearing with the
18 board. In that event the determination becomes final upon the
19 expiration of 30 days from the date the board issues its opinion
20 upon the petition.

21 (b) Notwithstanding any other provision of law, within 60 days
22 of the determination of the board, an action in the name of the
23 people of the State of California may be brought for a trial de novo
24 in superior court to determine the ~~deficiency (including tax,~~
25 ~~penalties, and interest) or the carryover amount~~ *allowance of*
26 *interest*, which was the subject of the determination of the board,
27 under any of the following circumstances:

28 (1) The action is filed, with the approval of the Executive
29 Officer of the Franchise Tax Board, by the Attorney General.

30 (2) The action is filed, with the approval of the Director of
31 Finance, by the Attorney General.

32 (3) The action is filed by the Attorney General.

33 (c) No action brought under subdivision (b) may be
34 compromised or dismissed without the approval of the Attorney
35 General.

36 SEC. 5. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 the only costs that may be incurred by a local agency or school
39 district will be incurred because this act creates a new crime or
40 infraction, eliminates a crime or infraction, or changes the penalty

1 for a crime or infraction, within the meaning of Section 17556 of
2 the Government Code, or changes the definition of a crime within
3 the meaning of Section 6 of Article XIII B of the California
4 Constitution.

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